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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/900,359	07/06/2001	Michael John Faulks	14,676.14	7546
23556	7590	05/20/2005	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC.			GOODMAN, CHARLES	
401 NORTH LAKE STREET			ART UNIT	
NEENAH, WI 54956			PAPER NUMBER	

3724

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/900,359

Applicant(s)

FAULKS ET AL.

Examiner

Charles Goodman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 40-52 is/are pending in the application.
- 4a) Of the above claim(s) 41-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15, 40, 51 and 52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/11/05.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. The Amendment filed on 2/11/05 has been entered.

#### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/11/05 has been entered.

#### ***Election/Restrictions***

3. Claims 41-50 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 4/22/03.

#### ***Specification***

4. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

#### ***Claim Rejections - 35 USC § 112***

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5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-15, 40, 51, and 52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 1 is vague and indefinite in that it is not clear what the claim encompasses. What is referred to by "rigid port", and what is the difference between the port and the orifice?

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. As best understood, claims 1-15, 40, 51, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chasid (EP 0930243).

Chasid discloses the invention substantially as claimed including a rigid port (e.g. 52) except that Chasid is silent as to the drag relationship between the sealing orifice (56) and the wet wipes (34). However, since the wipes are wet and the self sealing orifice is not, there inherently exists a reduction in drag between the two versus a dispenser using a dry wipe. To what extent, e.g. at least about 20%, it would appear that this is facilitated by many factors, e.g., the moisture content, the material of the wipes and/or the orifice, or the dimensions of the orifice. In that regard, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the device of Chasid with an orifice dimension, moisture content, and/or the material of either the orifice or the wipes in order to facilitate a desired amount of reduction in moisture to the dispensed wipes, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice, *In re Leshin*, 125 USPQ 416, (the above reasoning applies equally with the claimed silicon (claim 40), since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art, *In re Aller*, 105 USPQ 233, and since such a modification would have involved a mere change in the size or shape of a component. A change in size or shape is generally recognized as being within the level of ordinary skill in the art, especially since such a change does not render unexpected or

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unobvious results. *In re Rose*, 105 USPQ 237 (CCPA 1955). It is noted that one of the “flaps” is construed as a “blade” with respect to claim 38.

Regarding claim 5, the modified device of Chasid discloses the invention substantially as claimed except it is not clear whether the wipes are in a roll form or not. However, rolled or stacked form of the wipes are well known equivalents in the art and the Examiner takes Official Notice to that effect.

Regarding claims 10-15, it appears that the Chasid includes the space as claimed. However, since Chasid lacks a written disclosure thereto, it would have been obvious to the ordinary artisan at the time of the instant invention to provide the modified device of Chasid with the space as claimed in order to facilitate the desired gap dimension for wiping the wet wipes, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art, especially since such a change does not render unexpected or unobvious results. *In re Rose*, 105 USPQ 237 (CCPA 1955).

### ***Response to Arguments***

11. Applicant's arguments filed 2/11/05 have been fully considered but they are not persuasive.

In response to Applicant's basic argument that Chasid does not render the claims obvious because of the allegation that the elastic sealing orifice does not seal the port, this argument is traversed. Chasid teaches that the dispenser may use an opening in the sealed bag and thus, the cut slit in the bag in conjunction with the flaps allows the orifice to be sealed.

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**Conclusion**

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Goodman whose telephone number is (571) 272-4508. The examiner can normally be reached on Monday-Thursday between 7:30 AM to 6:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap, can be reached on (571) 272-4514. In lieu of mailing, it is encouraged that all formal responses be faxed to (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

cg  
May 16, 2005

  
**Charles Goodman**  
**Primary Examiner**  
**AU 3724**

**CHARLES GOOD**  
**PRIMARY EXAM**